

**OPINION
51-187**

October 22, 1951 (OPINION)

TAXATION

RE: School District Building Fund

You have asked the opinion of this office relative to the levy of Bismarck School District No. 1, Burleigh County, under the circumstances stated in yours of the 20th inst. as follows:

This District has submitted a budget of \$116,000 for building fund under Sec. 57-1516, 49 Supplement, N.D. Revised Code of 1943. This figure represents a mill levy of 10.03 mills. Under Sec. 57-1516 the governing body of a school district may levy annually for a school building fund not in excess of 10 mills. However, under Chapter 318 of the 1951 Session Laws the governing body of any city having a population of 2400 or more may levy taxes annually not in excess of 2 mills in each year for the purpose of acquiring real estate as a site for public buildings."

Section 57-1516 1949 Supplement authorizes a school district, when authorized by an election, to levy "not in excess of ten mills" for a school building fund, limited as provided in the section. Chapter 318 Laws of 1951 authorizes "the governing body of any city" to make a levy for "acquiring real estate as a site for public buildings."

It is our opinion that chapter 318 does not relate to or authorize a levy by a school district. A city and a school district are separate and distinct legal entities, even though their boundaries are the same.

Section 57-1516 relates to school districts only, and chapter 3218 relates to cities only. Therefore, it is the opinion of this office that the levy of Bismarck School District for a building is limited to 10 mills, and the levy may not exceed this amount in any degree.

Further, any excess over the 10 mill limitation may not be authorized by any construction of chapter 318 S.L. 1951.

As the levy authorized by chapter 318 S.L. 1951 is a special levy for a specific and limited purpose, it must be specifically designated in the city tax levy, and may be used only for the purpose of "acquiring real estate as a site for public buildings.

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Attorney General